

REMARKS-General

1. The independent claim 1 is amended to include further limitations previously brought forth in the disclosure. No new matter has been included. The amended claims 1 and 15 are submitted to be of sufficient clarity and detail to enable a person of average skill in the art to make and use the instant invention, so as to be pursuant to 35 USC 112.

2. Also, it is known that in order to incorporate the safety arrangement (40) with the pusher button (35), the pusher button (35) should have a slot or a cut-out on a sidewall of the pusher button (35) such that the stopper (433) is allowed to extend from the switch member (431) into the lighter housing (21) through the slot or the cut-out. Therefore, when the pusher button (35) is depressed, the stopper (433) is allowed to slide into the pusher button locking cavity (351). A person of average skill in the art is able to easily make the slot or the cut-out at the sidewall of the pusher button (35) in order to incorporate with the safety arrangement (40).

Response to Rejection of Claims 1-16 under 35USC112

3. The applicant submits that the claims 1 to 16 as amended particularly point out and distinctly claim the subject matter of the instant invention, as pursuant to 35USC112.

Response to Rejection of Claims 1, 4, 5, 7, 9 and 13 under 35USC103

4. The Examiner rejected claims 1, 4, 5, 7, 9 and 13 over JP'030 patent in view of Fairbanks, but these patents fail to suggest the invention of the amended independent claim 1, including the following distinctive structural features.

(I) A tubular lighter rod is extended from the lighter housing to form a utility lighter, wherein the lighter housing further has a safety slot communicating the internal cavity with an exterior of the lighter housing.

(II) A piezoelectric unit is supported in the internal cavity of the lighter housing for generating piezoelectricity.

(III) A locking member comprises a switching member slidably mounted on said lighter housing along the safety slot and a stopper which is extended from the switching member into the lighter housing and is arranged to normally block up a downward movement of the pusher button, wherein the locking member is movably supported by the lighter housing and adapted for being switched between a locked position and an unlocked position.

(IV) At the locked position, the stopper is aligned with the stop post to block the downward movement of the stopper to block any downward compression of the movable part of the piezoelectric unit to prevent generating sparks, and at the unlocked position, the stopper is moved out of alignment with the stop post to enable the pusher button to be moved downwardly to depress the movable part of the piezoelectric unit and generate sparks at the spark-generating tip to ignite the gaseous fuel emitted from the ignition tip.

5. Also, the safety arrangement is incorporated with a utility lighter that the tubular lighter rod extended from the lighter housing while the gas tube is extended from the gas-emitting nozzle to a top end portion of the lighter rod to form the ignition tip. It is clear that the lighter housing of the instant invention is embodied as the utility lighter but not the conventional disposable lighter such that the safety arrangement must be arranged to fit the interior cavity of the lighter housing of the utility lighter.

6. In addition, in order to ignite the utility lighter, the user must use a thumb thereof to push the switching member along the safety slot to drive the stopper moving out of alignment with the stop post. At the same time, the finger of the user must depress the pusher button to depress the movable part of the piezoelectric unit to generate sparks at the spark-generating tip. In other words, the user is able to grip the lighter housing that the thumb of the user reaches the switching member while the finger of the user reaches the pusher button. Therefore, a hand of an adult user should be big enough to easily perform the two continue actions at the same time for igniting the utility lighter.

7. JP '030 describes an arrangement in which a casing and a control rod which is slid in the axial direction and is provided inside a hollow part in the main casing, wherein the control rod is pushed into the main casing in such a manner by pushing the control

rod, the locking member at thereof can be displayed out of contact with the projecting piece under the control lever such that the control lever becomes operable.

8. JP `030, on the other hand, describes an arrangement in which the lighter housing is a casing of a disposable lighter wherein the spark producing mechanism comprises a flint and a file wheel to cause the spark by rotating the file wheel.

9. The Examiner appears to reason that since Fairbanks teaches that the spark producing mechanism can be alternatively selected as a piezoelectric spark-producing means, it would have been obvious to one skilled in the art to substitute the piezoelectric spark means for the rotatable wheel/flint spark means of JP `030. But this is clearly **not** a proper basis for combining references in making out an obviousness rejection of the present claims. Rather, the invention must be considered as a whole and there must be something in the reference that suggests the combination or the modification. See Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick, 221 U.S.P.Q. 481, 488 (Fed. Cir. 1984) ("The claimed invention must be considered as a whole, and the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination"), In re Gordon, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984), ("The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.") In re Laskowski, 10 U.S.P.Q.2d 1397, 1398 (Fed. Cir. 1989), ("Although the Commissioner suggests that [the structure in the primary prior art reference] could readily be modified to form the [claimed] structure, "[t]he mere fact that the prior art could be modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.")

10. Fairbanks suggests that the piezoelectric spark-producing means is one of the alternatives to generate spark for disposable lighter. However, Fairbanks fails to suggest how to incorporate the piezoelectric spark-producing means with the lighter housing of the utility lighter in a specific arrangement so as to achieve the particular function for the utility lighter.

11. In the present case, there is no such suggestion. JP `030 and Fairbanks perform very different types of ignition operation. JP `030 describes the user must push the control rod within the hollow part in the main casing such that the user is able to

rotate the file wheel and depress the control lever at the same time. It is obvious that such ignition operation is commonly preformed as a disposable lighter.

12. In any case, even combining JP `030 and Fairbanks would not provide the invention as claimed -- a clear indicia of nonobviousness. *Ex parte Schwartz*, slip op. p.5 (BPA&I Appeal No. 92-2629 October 28, 1992), ("Even if we were to agree with the examiner that it would have been obvious to combine the reference teachings in the manner proposed, the resulting package still would not comprise zipper closure material that terminates short of the end of the one edge of the product containing area, as now claimed.").

13. Applicant believes that neither JP `030 nor Fairbanks, separately or in combination, suggests or makes any mention whatsoever of:

(a) using an utility lighter housing and a safety arrangement as recited in claim 1, wherein the safety arrangement comprises a stop post extended from a wall of the pusher button, and a locking member which comprises a switching member slidably mounted on the lighter housing along the safety slot and a stopper which is extended from the switching member into the lighter housing and is arranged to normally block up a downward movement of the pusher button, wherein the locking member is movably supported by the lighter housing and adapted for being switched between a locked position and an unlocked position, wherein, in the locked position, the stopper is aligned with the stop post to block the downward movement of said stopper to block any downward compression of the movable part of the piezoelectric unit to prevent generating sparks, wherein, in the unlocked position, said stopper is moved out of alignment with the stop post to enable the pusher button to be moved downwardly to depress the movable part of the piezoelectric unit and generate sparks at the spark-generating tip to ignite said gaseous fuel emitted from the ignition tip; and

(b) performing different ignition operations of the utility lighter of JP `030 and Fairbanks.

Respons to Rejection of Claims 1- 5, 7-11, 13 and 14 under 35USC103

14. The Examiner rejected claims 1- 5, 7-11, 13 and 14 over Saito patent in view of Fairbanks, but these patents fail to suggest the invention of the amended independent claim 1, including the following substantial features.

(I) A tubular lighter rod is extended from the lighter housing to form a utility lighter, wherein the lighter housing further has a safety slot communicating said internal cavity with an exterior of said lighter housing.

(II) A piezoelectric unit is supported in the internal cavity of the lighter housing for generating piezoelectricity.

(III) A locking member comprises a switching member slidably mounted on the lighter housing along the safety slot and a stopper which is extended from the switching member into the lighter housing and is arranged to normally block up a downward movement of the pusher button, wherein the locking member is movably supported by the lighter housing and adapted for being switched between a locked position and an unlocked position.

(IV) At the locked position, the stopper is aligned with the stop post to block the downward movement of the stopper to block any downward compression of the movable part of the piezoelectric unit to prevent generating sparks, and at the unlocked position, the stopper is moved out of alignment with the stop post to enable the pusher button to be moved downwardly to depress the movable part of the piezoelectric unit and generate sparks at the spark-generating tip to ignite the gaseous fuel emitted from the ignition tip.

15. Saito describes an arrangement in which an actuating lever having a pivot axis, and a locking means slidably supported for motion in a path extending perpendicular to the pivot axis at an end of the lighter body between a locking position at one end of the path and a release position between the locking position and the pivot axis, the locking means having an engaging partial recess formed adjacent to the lighter body and having a blocking end at a side opposite from the lighter body.

16. Saito also describes an arrangement in which the lighter body is a casing of a disposable lighter wherein the ignition means comprises a file and a flint that the rotation of the file causes sparks to be produced by a contact with the flint.

17. The Examiner appears to reason that since Fairbanks teaches that the spark producing mechanism can be alternatively selected as a piezoelectric spark-producing means, it would have been obvious to one skilled in the art to substitute the piezoelectric spark means for the rotatable wheel/flint spark means of Saito. But this is clearly **not** a proper basis for combining references in making out an obviousness rejection of the present claims. Rather, the invention must be considered as a whole and there must be something in the reference that suggests the combination or the modification. See Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick, 221 U.S.P.Q. 481, 488 (Fed. Cir. 1984) ("The claimed invention must be considered as a whole, and the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination"), In re Gordon, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984), ("The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.") In re Laskowski, 10 U.S.P.Q.2d 1397, 1398 (Fed. Cir. 1989), ("Although the Commissioner suggests that [the structure in the primary prior art reference] could readily be modified to form the [claimed] structure, "[t]he mere fact that the prior art could be modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.")

18. Fairbanks suggests that the piezoelectric spark-producing means is one of the alternatives to generate spark for disposable lighter. However, Fairbanks fails to suggest how to incorporate the piezoelectric spark-producing means with the lighter housing of the utility lighter in a specific arrangement so as to achieve the particular function for the barbecue lighter as claimed in the instant invention.

19. In the present case, there is no such suggestion. Saito and Fairbanks perform very different types of ignition operation. Saito describes the user must push the locking member into the lighter body such that the user is able to rotate the file and depress the actuating lever at the same time. It is obvious that such ignition operation is commonly preformed as a disposable lighter.

20. In any case, even combining Saito and Fairbanks would not provide the invention as claimed -- a clear indicia of nonobviousness. Ex parte Schwartz, slip op. p.5 (BPA&I Appeal No. 92-2629 October 28, 1992), ("Even if we were to agree with the examiner that it would have been obvious to combine the reference teachings in the manner proposed, the resulting package still would not comprise zipper closure material that terminates short of the end of the one edge of the product containing area, as now claimed.").

21. Applicant believes that neither Saito nor Fairbanks, separately or in combination, suggests or makes any mention whatsoever of:

(a) using an utility lighter housing and a safety arrangement as recited in claim 1, wherein the safety arrangement comprises a stop post extended from a wall of the pusher button, and a locking member which comprises a switching member slidably mounted on the lighter housing along the safety slot and a stopper which is extended from the switching member into the lighter housing and is arranged to normally block up a downward movement of the pusher button, wherein the locking member is movably supported by the lighter housing and adapted for being switched between a locked position and an unlocked position, wherein, in the locked position, the stopper is aligned with the stop post to block the downward movement of said stopper to block any downward compression of the movable part of the piezoelectric unit to prevent generating sparks, wherein, in the unlocked position, said stopper is moved out of alignment with the stop post to enable the pusher button to be moved downwardly to depress the movable part of the piezoelectric unit and generate sparks at the spark-generating tip to ignite said gaseous fuel emitted from the ignition tip; and

(b) performing different ignition operations of the utility lighter of Saito and Fairbanks.

22. Applicant believes that for all of the foregoing reasons, all of the claims are in condition for allowance and such action is respectfully requested.

Combination of Elements

23. The Court of Appeal of the Federal Circuit has stated, "[V]irtually all [inventions] are combinations of old elements." Environmental Designs, Ltd. V. Union Oil Co., 713

F.2d 693, 698, 218 USPQ 865, 870 (Fed. Cir. 1983); see also Richdel, Inc. v. Sunspool Corp., 714 F.2d 1573, 1579-80, 219 USPQ 8, 12 (Fed. Cir. 1983). Thus, "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." In re Fine, 5 USPQ 2d 1600 (Fed. Cir. 1988).

24. Both JP `030 and Saito describe the safety device incorporated with the disposable lighter by using flint-type ignition system. Fairbanks suggests that the piezoelectric spark-producing means as an alternative of the ignition system. However, the piezoelectric spark-producing means must be in a specific arrangement for the utility lighter in order to incorporate between the pusher button and the safety arrangement. None of JP `030, Saito, and Fairbanks suggests how to incorporate the safety arrangement and the piezoelectric unit with the barbecue lighter as claimed in the instant invention.

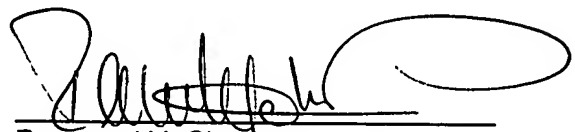
25. In other words, the Office Action cannot, based on hindsight gained from the applicant's invention, argue that it is obvious to substitute the piezoelectric spark-producing means for the flint-type ignition to incorporate with the barbecue lighter as claimed in the instant invention.

The Cited but Non-Applied References

26. The cited but not relied upon references have been studied and are greatly appreciated, but are deemed to be less relevant than the relied upon references.

27. In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of the rejection are requested. Allowance of claims 1 to 16 at an early date is solicited.

Respectfully submitted,



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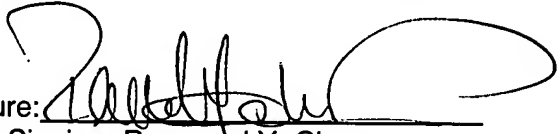
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